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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,278	06/30/2006	Sheila Marie Schmutz	046423-0006US	7966
7590 Heenan Blaikie LLP Bay Adelaide Centre Suite 2900 333 Bay Street, P.O. Box 2900 Toronto, Ontario, M5H 2T4 CANADA			EXAMINER SALMON, KATHERINE D	
			ART UNIT 1634	PAPER NUMBER
			MAIL DATE 07/13/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/565,278

Applicant(s)

SCHMUTZ ET AL.

Examiner

KATHERINE SALMON

Art Unit

1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-9, 11, 20 and 21.

Claim(s) withdrawn from consideration: 10 and 12-15.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Sarae Bausch /
Primary Examiner, Art Unit 1634

Continuation of 3C: NOTE: The proposed amendments to the claims are not in compliance with 37 CFR 1.121 and as such are not entered. It is noted that IF these claims were submitted in the proper form that they would be entered, however, the proposed amendments would not overcome all the rejections of record.

Continuation of 11: In order to provide compact prosecution, the examiner has reviewed the proposed amendments to the claims even though they have not been entered.

It is noted that if the proposed claims were entered than the 35 USC 112/2nd paragraph rejection would be withdrawn. With regard to the enablement rejection presented in the last office action, it is noted that even if these proposed amendments were entered, the 35 USC 112/Enablement would be maintained. Specifically the claims still are drawn to the detection of the presence of only one allele at position 150 of SEQ ID No. 1. Specifically the claims as proposed are not limited to determining animals with a CC and CT genotype have the phenotype of increased ribeye as compared to those with the TT genotype. Rather the claims are drawn to detection of only one allele at position 150. Rather the claims are broadly drawn to determining whether a T/C polymorphism is present in one allele of position 150 of SEQ ID NO. 1. Therefore if the skilled artisan detects the T allele at this position it would not have an increased rib eye area. But based upon the arguments if animals are heterozygous for the C allele there is an association to increased ribeye. Therefore depending on which allele the skilled artisan detects in an heterozygous animal there is a different association. Therefore it is suggested that the claims be amended to recite that either a CC or a CT genotype is detected compared to an bos Taurus with a TT genotype.

It is noted that with regard to the proposed amendments and the 35 USC 102(b) rejection made in the previous office action, that the proposed amendments would not overcome the art of record. Specifically claim 11 has not been amended and the rejection would still be maintained based upon the arguments previously presented. With regard to the proposed amendment to claim 20, this proposed amendment, if entered, would overcome the art of record.